

# **EXHIBIT 17**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

ORACLE CORPORATION, a	)	
Delaware corporation, ORACLE	)	
USA, INC., a Colorado	)	
corporation, and ORACLE	)	
INTERNATIONAL CORPORATION, a	)	
California corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	No. 07-CV-1658 (PJH)
	)	
SAP AG, a German corporation,	)	
SAP AMERICA, INC., a Delaware	)	
corporation, TOMORROWNOW,	)	
INC., a Texas corporation, and	)	
DOES 1-50, inclusive,	)	
	)	
Defendants.	)	
	)	

30(b)(6) VIDEOTAPED DEPOSITION OF  
ORACLE USA, INC.  
(DEFENDANTS' FIRST DEPOSITION NOTICE)  
BY ITS DESIGNEE  
DR. UWE KOEHLER

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THURSDAY, DECEMBER 4, 2008

HIGHLY CONFIDENTIAL  
REPORTED BY: HOLLY THUMAN, CSR No. 6834, RMR, CRR  
(1-414227)

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09:26:46 19 Q. Okay. When -- why is there a distinction  
09:26:48 20 made between the download part of the investigation  
09:26:52 21 and the click part of the investigation?

09:26:54 22 A. These two investigations started  
09:26:56 23 independently from each other.

09:27:01 24 Q. Okay. And you've already indicated the  
25 download part of the investigation started through

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09:27:14 1 Buffy Ransom and Jim Patrice's group. Yes?

09:27:17 2 A. To my knowledge, I only know about Buffy,  
09:27:22 3 Jim Patrice and Julie O'Shea. I don't recall  
09:27:26 4 anybody else who was involved at that time.

09:27:27 5 Q. Before you got involved?

09:27:29 6 A. Before we got involved, correct.

09:27:36 7 Q. Then what was the start; what precipitated  
09:27:39 8 or started the click investigation?

09:27:40 9 MR. ALINDER: Objection. Calls for  
09:27:41 10 speculation.

09:27:43 11 You can answer it to the extent you know.

09:27:46 12 THE WITNESS: Okay. I can tell you what I  
09:27:50 13 know, what I found out speaking to the people who  
09:27:55 14 had been involved in this clickstream investigation.

09:28:07 15 What I learned was that Oracle, the support  
09:28:11 16 organization, lost customers. That was just a  
09:28:16 17 matter of fact. And some of these customer names  
09:28:20 18 showed up on the TomorrowNow web page, as a matter  
09:28:23 19 of fact. That was not a secret. Public  
09:28:24 20 information.

09:28:29 21 And the support organization became  
09:28:34 22 concerned why this happens, and wanted to know  
09:28:38 23 what's wrong, what are we doing wrong, what can we  
09:28:41 24 do better, whatever.

25 And that was mentioned in a meeting, Jim

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09:28:55    1    Patrice meeting. And Sid Chilakapati, or -- I don't  
09:28:57    2    know how to pronounce the name.

09:28:59    3            Q. We'll refer to him as Sid.

09:29:01    4            A. Sid, correct. That makes it easier.

09:29:03    5            Q. I know who you're talking about.

09:29:06    6            A. So Sid started to -- that's what he told  
09:29:09    7    me. He started to implement reports on the Customer  
09:29:14    8    Connection site, reports especially about the  
09:29:17    9    customer feedback, which we refer to clicks, because  
09:29:21    10    there was a feedback button, has that solution  
09:29:23    11    helped you, yes, no, click on that. That's why we  
09:29:24    12    are talking about clicks.

09:29:30    13            And he started to create reports to get  
09:29:32    14    reports about a customer feedback in order to have  
09:29:36    15    to figure out what's wrong with the customers.

09:29:39    16            And when he doing that, and had implemented  
09:29:41    17    a report, that was at the end of January, and he run  
09:29:48    18    the reports, he noticed two -- another two strange  
09:29:54    19    things: First of all, he noticed a huge, tremendous  
09:29:57    20    high number of the "no" click, saying the customer  
09:30:00    21    answered, did that solution help you, did that  
09:30:03    22    download help you, no. A tremendous high number,  
09:30:05    23    which was suspicious or strange.

09:30:08    24            And when he started to dig into that a  
             25    little bit deeper, so who are these customers

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09:30:15 1 clicking on no, and what's related to that, he found  
09:30:19 2 another thing, that the timing of these clicks were  
09:30:22 3 strange, because the download had been just  
09:30:26 4 completed successfully, and a few milliseconds  
09:30:29 5 later, the click happened. And said, that is  
09:30:32 6 strange, because this cannot have been done by a  
09:30:34 7 human being. It must have been an automated  
09:30:37 8 program. That was his conclusion out of that.

09:30:38 9                    And that started the second investigation,  
09:30:41 10 which we refer to the click investigation.

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09:42:32 8            Q. -- and you can tell me, on each topic in

09:42:34 9            the deposition notice, what did you talk to

09:42:36 10          Ms. Ransom about?

09:42:37 11            MR. ALINDER: Objection. Assumes facts not

09:42:39 12          in evidence.

09:42:41 13            THE WITNESS: Excuse me?

09:42:43 14            MR. ALINDER: You can answer.

09:42:46 15            THE WITNESS: I asked her for the dates.

09:42:51 16          When she started, because she was the first one.

09:42:57 17          And at that point, I recalled the date, November the

09:43:02 18          28th, when it was raised to us, but I didn't know

09:43:03 19          when Buffy actually started.

09:43:04 20            MR. COWAN: Q. And what did she tell you?

09:43:07 21            A. She told me she started just one day

09:43:09 22          before, on November the 27th.

09:43:11 23            Q. Did she tell whether you she knew if anyone

09:43:13 24          else had started the investigation prior to November

25          27th?

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09:43:19 1 A. She was not aware of that.

09:43:21 2 Q. Is there any other of these topics or  
09:43:23 3 issues covered by the deposition notice that you  
09:43:26 4 discussed with Ms. Ransom?

09:43:26 5 A. Yes.

09:43:26 6 Q. What?

09:43:29 7 A. Number B, I asked her why she actually  
09:43:31 8 started to look at that.

09:43:32 9 Q. And what did she tell you?

09:43:36 10 A. She told me she looked at, as I mentioned  
09:43:42 11 earlier, Jason Rice' logs, as a routine, so it was  
09:43:45 12 not started as an investigation. She looked -- she  
09:43:50 13 requested Jason Rice' database logs, which she does  
09:43:54 14 periodically, pretty much every quarter.

09:43:57 15 She did it -- she told me she did it  
09:44:01 16 specifically in November, because at that time,  
09:44:04 17 J.D. Edwards had published or released a couple of  
09:44:09 18 critical patches, and she just wanted to know if the  
09:44:14 19 patches had been downloaded, if the critical  
09:44:16 20 customers had downloaded the patches. She just  
09:44:18 21 wanted to know what was going on with these patches.  
09:44:23 22 That was the whole reason looking at these log  
09:44:24 23 files.

09:44:29 24 Q. Okay. And these Jason Rice database logs  
25 are things that Jason Rice routinely produces or



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09:44:35 1 generates?

09:44:36 2 MR. ALINDER: Objection. Calls for

09:44:40 3 speculation.

09:44:41 4 THE WITNESS: Yes, I don't know if he --  
09:44:43 5 well, he makes these reports available when somebody  
09:44:46 6 is asking him. Other than that, we refer to him  
09:44:49 7 since he is managing the database, and he developed  
09:44:51 8 that database.

09:44:53 9 MR. COWAN: Q. Okay. So he has the  
09:44:56 10 ability to query the logs off that database on  
09:44:59 11 demand, but he doesn't regularly generate reports  
09:45:02 12 based on those logs?

09:45:05 13 A. To my knowledge, this is correct, yes, to  
09:45:07 14 my knowledge.

09:45:10 15 Q. Did Buffy tell that she had asked Jason to  
09:45:12 16 run these database logs?

09:45:12 17 A. No.

09:45:14 18 Q. Did she tell you how she came to get the  
09:45:17 19 log, other than the fact she reviewed them?

09:45:19 20 A. No.

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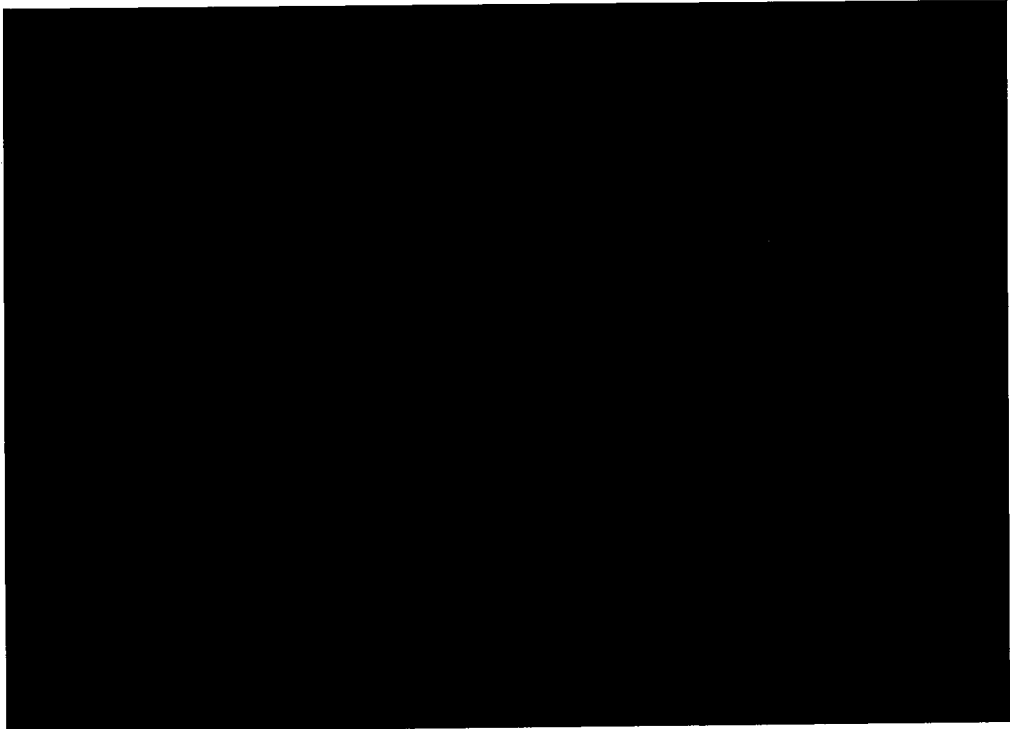
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13:39:08 11            Q. What is your current title at Oracle?

13:39:11 12            A. My title is Senior Director, Global

13:39:14 13            Information Security Compliance and Risk.

13:39:18 14            Q. And you've had that title from 2006 till

13:39:20 15            today?

13:39:22 16            A. That is correct.

13:39:26 17            Q. And part of your responsibilities are

13:39:30 18            investigating certain issues that may come up. This

13:39:33 19            is an example of those kind of things, but part of

13:39:38 20            your responsibilities is to conduct certain

13:39:40 21            investigations regarding information security as

13:39:41 22            they are requested of you.

13:39:42 23            A. That is correct.

13:39:46 24            Q. And part of those investigations, you are

25            in charge of gathering certain facts, conducting

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13:39:52 1 analysis, and then reaching either some preliminary

13:39:56 2 or ultimate conclusions regarding those facts.

13:39:57 3 Correct?

13:39:58 4 A. That is correct.

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14:20:43 14            Q.    Okay.    Do you know what is meant by the  
14:20:46 15    word "much" in the sentence, "By reviewing the  
14:20:49 16    server's logs, Oracle determined that much of the  
14:20:53 17    download activity originated from one particular IP  
14:20:55 18    address"?    Does that make any sense to you?

14:20:58 19            A.    I can only speculate.    My speculation would  
14:21:18 20    be, it's referring to the excessive downloads.

14:21:20 21            Q.    And that's just, from the way you read  
14:21:24 22    that, just an indication that the logs had other  
14:21:30 23    download activity on it that wasn't as part of the  
14:21:32 24    investigation correlated to TomorrowNow, because  
25    it's picking up all the activity?

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14:21:38 1            A. Correct. The download logs had all the  
14:21:42 2            downloads from every customer, everywhere, on  
14:22:04 3            the world. However -- yeah, what we did is, we did  
14:22:10 4            a very simple analysis. I mean, we just counted the  
14:22:14 5            number of lines related to the TomorrowNow IP  
14:22:19 6            address, and we counted a number of lines not  
14:22:24 7            TomorrowNow's IP address. That was the first one.

14:22:27 8            And the second was, the logs also contain  
14:22:30 9            the number of bytes downloaded, and then we counted  
14:22:33 10           the number of bytes downloaded by TomorrowNow's IP  
14:22:38 11           address and the number of bytes downloaded by  
14:22:40 12           anybody else except TomorrowNow.

14:22:45 13           And what we have seen there, it's a simple  
14:22:48 14           calculation. I mean, it took me a week to write the  
14:22:52 15           program to do that to produce the logs, but it's  
14:22:55 16           quite simple and understandable how to do that.

14:22:58 17           But what we have seen had been specifically  
14:23:03 18           one month, December 2006, there had been certain  
14:23:06 19           days where TomorrowNow downloaded more than anybody  
14:23:11 20           else. Which means the number of bytes, or  
14:23:15 21           gigabytes, actually downloaded from TomorrowNow's IP  
14:23:17 22           address was more than the number of bytes downloaded  
14:23:22 23           by anybody else in the world.

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## CERTIFICATE OF REPORTER

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I, HOLLY THUMAN, a Certified Shorthand

Reporter, hereby certify that the witness in the

foregoing deposition was by me duly sworn to tell the

truth, the whole truth, and nothing but the truth in the

within-entitled cause; that said deposition was taken

down in shorthand by me, a disinterested person, at the

time and place therein stated, and that the testimony of

the said witness was thereafter reduced to typewriting,

by computer, under my direction and supervision;

That before completion of the deposition,

review of the transcript ☒ was ☐ was not requested.

If requested, any changes made by the deponent (and

provided to the reporter) during the period allowed are

appended hereto.

I further certify that I am not of counsel or

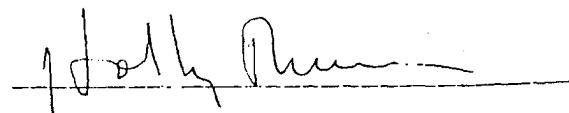
attorney for either or any of the parties to the said

deposition, nor in any way interested in the event of

this cause, and that I am not related to any of the

parties thereto.

DATED December 17, 2008.



HOLLY THUMAN, CSR No. 6834

## Errata Sheet

Deposition of Uwe Koehler, December 4, 2008

<u>Page</u>	<u>Line</u>	<u>Change</u>	<u>Reason</u>
18	2	Change "and the" to "and they"	Correction
26	10	Change "wage" to "page"	Correction
29	6	Change "Maureen" to "Marlene"	Correction
84	20	Change "lab servers" to "web servers"	Correction
152	25	Change "Korella" to "Grella"	Correction
192	13	Change "on" to "or"	Correction
219	3	Change "record" to "recall"	Correction
221	6	Change "see" to "say"	Correction
226	3	Change "dives" to "drives"	Correction
229	21	Change "assistant" to "system"	Correction

Subject to the above changes, I certify that the transcript is true and correct.

  
Signature

20-Jan-09  
date